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Attorneys for Union Home Loan, Inc.; et.al.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

<p>In re:</p> <p>THE FALLS EVENT CENTER LLC; THE FALLS AT GILBERT, LLC; THE FALLS AT MCMINNVILLE, LLC; THE FALLS AT ST. GEORGE, LLC; THE FALLS AT FRESNO, LLC; THE FALLS AT CLOVIS, LLC; THE FALLS OF LITTLETON, LLC; THE FALLS AT CUTTEN ROAD, LLC; THE FALLS AT STONE OAK PARKWAY, LLC; THE FALLS AT BEAVERTON, LLC; AND THE FALLS AT ROSEVILLE, LLC</p> <p>Consolidated Debtors.</p>	<p>Bankr. Case Nos.</p> <p>18-25116; 18-25419; 18-25492; 18-26653; 18-27713; 18-28140; and 18-27111</p> <p>(Substantively Consolidated under Case No. 18-25116)</p> <p>Chapter 11</p> <p>The Honorable R. Kimball Mosier</p>
<p>In re:</p> <p>THE FALLS AT MCMINNVILLE, LLC</p> <p>Debtor.</p>	<p>Bankr. Case No. 18-25492</p> <p>Chapter 11</p> <p>The Honorable R. Kimball Mosier</p>

**DECLARATIONS OF DAN GOLDFIELD AND STEVE
RUSSAK, AND COMPENDIUM OF EXHIBITS IN SUPPORT
OF UNION HOME LOAN'S OBJECTION/OPPOSITION TO
CHAPTER 11 TRUSTEE'S MOTION TO SELL PROPERTY
OUT OF THE ORDINARY COURSE OF BUSINESS, FREE AND
CLEAR OF ALL INTERESTS AND SUBJECT TO HIGHER
AND BETTER OFFERS, TO MCMINNVILLE PROPERTIES,
LLC, PURSUANT TO 11 U.S.C. § 363(b), (f) and (m);
APPROVAL OF SALE PROCEDURES, INCLUDING A BREAK-
UP FEE; AND WAIVER OF THE STAY SET FORTH IN FED. R.
BANKR. P. 6004(h).**

DECLARATION OF DAN GOLDFIELD

I Dan Goldfield to declare and state as follows:

1. I am over 18 years of age and I could and would competently testify to the contents of this declaration of called upon to do so in a court of law. All of the facts stated in this declaration are personally known to me except where stated on information and belief and as to those matters, I am reasonably informed and believe them to be true. I am the President of Union Home Loan, Inc. ("Union"). Union is the authorized agent and servicer under a written management agreement for the beneficiaries and real parties in interest set forth in detail and incorporated herein by reference in Exhibit 2, which is the Beneficiary Addendum to Union Loan # 2016160, and more particularly described in this declaration. The beneficiaries in the Beneficiary Addendum, or their legal assignees of record, set forth are hereafter referred to as "Union". I make this declaration in support of Union's Objection to the Trustee's Motion to Sell certain assets of the consolidated debtor The Falls At McMinnville, including real estate that is collateral for a Note in favor of Union. I Declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct. Executed this 18th Day of July 2019 in Calabasas California.

2. Union filed a secured proof of claim in the McMinnville Chapter 11 case # 18-25492, Claim # 11-1. A true and correct copy of that claim is attached as Exhibit 1.
3. The \$3,000,000.00 Union loan to the consolidated debtor was made in December 2016. McMinnville the borrower is in default for all pre-petition payments after January 2018, and Union's Note matured in June 2018.
4. After the bankruptcy, but only recently in August 2019 the trustee for the estate of the consolidated debtors began making partial payments pursuant to a court approved agreement to continue a Union's Motion for Relief.
5. As of October 31, 2019, the estimated payoff for the Union loan to McMinnville (the consolidated debtor) was **\$3,972,036.00**. Attached as Exhibit 2, is an accurate accounting of the accrued principal interest, late fees and estimated foreclosure and attorney's fees owed on the notes through October 31, 2019. The amount owed on the Union loan will continue to increase by approximately \$45,000.00 per month plus late fees and legal fees less payments made by the estate, until paid in full.
6. A true and correct copy of the Deed of Trust securing Union's loan, recorded in Yamhill County Oregon on December 21, 2016 is attached as Exhibit 3.
7. The actual legal descriptions of Union's collateral in the consolidated debtor's property is a part of that Deed of Trust and designated as "Property 1".
8. I have read the Trustee's motion to sell ("Motion"). Union has a security interest in three parcels of land that the Trustee in this Motion seeks to sell free and clear of liens. Specifically, Union has a lien on what the Motion describes as parcel # 1 (a part of it), parcel # 2, and parcel # 4.
9. Another undisputed senior secured creditor identified in the Motion is Scott Gould. Attached as Exhibit 4 is a true and correct copy of the deed of trust recorded by Mr. Gould in August 2016,

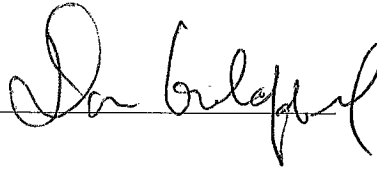
to a secure an obligation purported to be \$2.2 million against property of this consolidated debtor.

10. Attached as Exhibit 5 is a deed of trust subsequently recorded December 9, 2016 in Yamhill County Oregon which amends the deed of trust recorded by Scott Gould in August (Ex. 4) on behalf of Scott Gould by a title company TICOR. The legal description of the Gould collateral after the recording of his amended deed of trust is set forth in the "CORRECTED EXHIBIT "A"" on the last two pages of Exhibit 5.
11. On October 3, 2017 another trust deed was recorded on behalf of Scott Gould, entitled "First Amendment to Trust Deed". A true and correct copy of Scott Gould's October 3, 2017 "First Amended" deed of trust is attached as Exhibit 6. Exhibit 6 did not change the legal description of Gould's collateral but did increase the principal amount of the secured obligation to him from \$2.2 million to \$2.45 million.
12. I carefully compared the legal descriptions of Gould's collateral as set forth in Exhibit 5 with the legal description provided in the Buyer's Purchase & Sale Agreement ("PSA") Exhibit A to Exhibit 1 to the Trustee's Motion. By **legal description** Scott Gould's collateral attaches to the property described in the Motion/PSA as a part of parcel #1 and all of parcel # 5.
13. In the Motion the Trustee asserts that, based upon his title report (Motion Ex. 4) Gould's lien attaches to what is identified as parcel 1 & parcel # 4. Either the Trustee or his title company are simply wrong, a fact which can be determined as easily as laying the property legal description identified in the Title Report or in the PSA side-by-side and carefully comparing it with the legal description, as amended, in Gould's controlling deed of trust (Ex. 5). Also, the legal description in the PSA, (Motion Ex. 1) and the Title Report (Motion Ex. 4) do not match *each other*. The PSA legal description is decidedly larger and includes additional land in "parcel 1" that does not appear in the legal description that is "parcel 1" in the Trustee's Title Report.

14. In sum the trustee's motion places a significant lien in favor of Gould in a senior position to Union on the parcel for collateral and does not give him recognition of his lien on parcel 5. By simply putting the operative deeds next to each other and comparing legal language the Trustees (title company's) error is easily recognizable.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct. I could and would competently testify to the contents of this declaration of called upon to do so in a court of law. Executed this first day of November 2019 in Calabasas California.

/s/ Dan Goldfield
Dan Goldfield

A handwritten signature in black ink, appearing to read "Dan Goldfield", written over a horizontal line.

DECLARATION OF STEVE RUSSAK

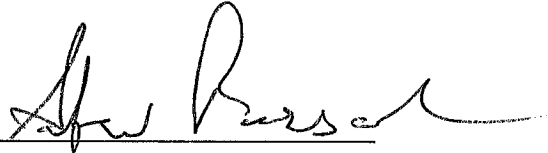
I Steve Russak to declare and state as follows:

1. I am over 18 years of age and I could and would competently testify to the contents of this declaration of called upon to do so in a court of law. All of the facts stated in this declaration are personally known to me except where stated on information and belief and as to those matters, I am reasonably informed and believe them to be true.
2. My brother Robert & I (individually through our respective family trusts) are principal and majority investors in the beneficial interests of a loan made by Union Home Loan, Inc. and secured by property owned by the Falls At McMinnville in Yamhill County Oregon. Our collateral is the situs of the Wings and Waves Waterpark, an adjacent events center "lodge" and adjacent agricultural land. I make this declaration in support of union's opposition to a motion by the Trustee of the Falls at McMinnville to sell property some of which serves as collateral for the \$3 million loan which Union made to the debtor in December 2016. The most significant port portion of the funds loaned to the Falls at McMinnville is from my family trust and my brother's family trust.
3. On or about June 7, 2019 I personally made a \$4.5M written cash offer to the Trustee (via his broker at JLL Properties) to purchase the parcels of land that are encumbered by Union's loan. A copy of that offer is attached as Exhibit 7.
4. After about 2 weeks I had not heard from JLL, so I called to find out if following up with the broker at JLL to make sure the offer had been conveyed. I spoke to Adam Taylor. Mr. Taylor told me that my written letter of intent offer had been conveyed to Mr. Thompson, and that the broker had heard no response from Mr. Thompson at all.
5. I found this odd because I think my offer would have resulted in money for unsecured creditors of the estate.

6. Moreover, only a few weeks before in mid-May 2019, Mr. Taylor had advised me, in writing, that he thought the Waterpark, and adjacent agricultural land were worth \$3M and \$1M respectively. A copy of Mr. Taylor's e-mail to me in that regard is also a part of Exhibit 7. My offer for just that portion of the project was \$500K *higher* than his estimate, so it was troubling to me that my offer elicited no response, or counter offer or anything from the Trustee.
7. The Trustee makes no mention of my offer in his declaration in support of his Motion.

I Declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct. Executed this 1st Day of November 2019 in Simi, California.

/s/ Steven Russak
Steven Russak

A handwritten signature in black ink, appearing to read "Steven Russak", written over a horizontal line.

CERTIFICATE OF SERVICE

Service of the foregoing **DECLARATIONS OF DAN GOLDFIELD AND STEVE RUSSAK, AND COMPENDIUM OF EXHIBITS IN SUPPORT OF UNION HOME LOAN'S OBJECTION/OPPOSITION TO CHAPTER 11 TRUSTEE'S MOTION TO SELL PROPERTY OUT OF THE ORDINARY COURSE OF BUSINESS, FREE AND CLEAR OF ALL INTERESTS AND SUBJECT TO HIGHER AND BETTER OFFERS, TO MCMINNVILLE PROPERTIES, LLC, PURSUANT TO 11 U.S.C. § 363(b), (f) and (m); APPROVAL OF SALE PROCEDURES, INCLUDING A BREAK-UP FEE; AND WAIVER OF THE STAY SET FORTH IN FED. R. BANKR. P. 6004(h).**

shall be served on the parties in the manner designated below:

By Electronic Service: I certify that the parties of record in this case, as identified below, are registered CM/ECF users.

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- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- John J. Wiest wiest.john@dorsey.com

By U.S. Mail: In addition to the parties receiving notice through CM/ECF system, the following parties should be served notice pursuant to Fed R. Civ.P.5(b).

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/s/ /s/ Darren Neilson

Darren Neilson